

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Melissa M. Youells

(b) County of Residence of First Listed Plaintiff Luzerne County, PA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Kevin C. Quinn, Esq. & Brian Q. McDonnell, Esq.
Hourigan, Kluger & Quinn
600 Third Street, Kingston, PA 18704 / Phone: 570-287-3000

DEFENDANTS

Julius A. Dzakpasu & Western Express, Inc., d/b/a Western Express

County of Residence of First Listed Defendant Lowndes County, GA
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)
Stephen E. Geduldig, Esq. & Bradley N. Sprout, Esq.
Pion, Nerone, Girman, Winslow & Smith, P.C.
240 N. 3rd St., 10th Fl., Harrisburg, PA 17101 / Phone: 717-737-5833

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input checked="" type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Diversity Jurisdiction -- 28 U.S.C. 1332

Brief description of cause:

Personal Injury -- Negligence -- Motor Vehicle Accident

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

Excess of \$50,000

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

4/12/2019

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

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Fax: 717-737-5553

Attorneys for Defendants:
Julius A. Dzakpasu & Western Express, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MELISSA M. YOUELLS
Plaintiff

v.

JULIUS A. DZAKPASU and
WESTERN EXPRESS, INC., d/b/a
WESTERN EXPRESS
Defendants

:
: No. _____
:
: CIVIL ACTION – LAW
:
:
:
: JURY TRIAL DEMANDED

NOTICE OF REMOVAL

TO THE CLERK OF THE COURT:

Defendants, Julius A. Dzakpasu and Western Express, Inc., d/b/a Western Express, by and through their undersigned counsel, Stephen E. Geduldig, Esq., Bradley N. Sprout, Esq., and Pion, Nerone, Girman, Winslow & Smith, P.C., hereby submit the following Notice of Removal pursuant to 28 U.S.C. §1441 and remove the state court action described below to the United States District Court of the Middle District of Pennsylvania.

1. On or about February 15, 2019, the Plaintiff, Melissa M. Youells, commenced an action against Julius A. Dzakpasu and Western Express, Inc. by filing a Praecipe for Writs of Summons in the Court of Common Pleas of Luzerne County, Pennsylvania, Docket No. 1812-2019 (the “Lawsuit”). A copy of the Praecipe for Writs of Summons and Writs of Summons are attached to this Notice of Removal as **Exhibit A**.

2. The Court of Common Pleas of Luzerne County is located within the territorial jurisdiction of the United States District Court for the Middle District of Pennsylvania. Accordingly, removal to this Court is proper pursuant to 28 U.S.C. § 1446(a).

3. On or about March 18, 2019, Plaintiff’s counsel, Brian Q. McDonnell, mailed Defendants’ counsel a courtesy copy of the Complaint that Plaintiff filed with Luzerne County Court of Common Pleas, which was received by Defendants’ counsel on March 20, 2019. A copy of the Complaint and enclosing correspondence is attached to this Notice of Removal as **Exhibit B**.

4. Accordingly, removal is being made within the time permitted by 28 U.S.C. § 1446(b)(2)(B).

5. Pursuant to 28 U.S.C. § 1446(b)(2)(A), all Defendants, who are all represented by the undersigned counsel, consent to the removal of the Lawsuit to this Court.

6. Removal of the Lawsuit to this Court is proper under 28 U.S.C. § 1441(a) because this Court has original jurisdiction – specifically, diversity jurisdiction under 28 U.S.C. § 1332 – over Plaintiff’s claims.

7. The requirement of complete diversity between Plaintiff and Defendants is met, as set forth below:

a. Plaintiff resides in, and thus is a citizen of, Pennsylvania. (See Exhibit B, Complaint, ¶ 1).

b. Western Express, Inc. is a citizen of Tennessee, as it is both incorporated in Tennessee and has its principal place of business in Tennessee. (See Exhibit B, Complaint, ¶ 3).

c. Julius A. Dzakpasu resides in, and thus is a citizen of, Georgia. (See Exhibit B, Complaint, ¶ 2).

d. As such, there is complete diversity of citizenship between Plaintiff and the Defendants.

e. Moreover, none of the Defendants are citizens of Pennsylvania and, thus, the requirements of 28 U.S.C. § 1441(b)(2) are met.

8. The requirement of an amount in controversy in excess of \$75,000 is met, as set forth below:

a. The Lawsuit arises out of a motor vehicle accident that occurred on March 15, 2017 on Schoenersville Road in Bethlehem, Pennsylvania.

b. Plaintiff's Complaint makes a claim for unliquidated damages in excess of \$50,000 (the amount which exempts a case from compulsory arbitration), but does not demand a specific sum.

c. Nonetheless, Plaintiff seeks to recover damages for "severe, painful, and disabling injuries" that include: cervicalgia; cervical sprain/strain; cervical radiculopathy; aggravation of cervical spondylosis; right shoulder pain; right shoulder strain; right rotator cuff tear; right rotator cuff tendonitis; right biceps tendonitis; bursitis and fraying of the right shoulder infraspinatus and supraspinatus tendons; headaches; thoracic sprain/strain; thoracic disc herniations/disc extrusion at T7-8; aggravation of thoracolumbar spondylosis; lumbago; lumbar sprain/strain; lumbar radiculopathy; aggravation of lumbar spondylitic changes; bilateral sacroilitis; post-traumatic stress disorder; major depression disorder; anxiety; chronic pain; muscle spasms; difficulty sleeping; fatigue; discomfort; paresthesia and abnormal and altered sensation; multiple sprains, strains, and contusions; persistent pain, limitation of motion and restriction of activities; humiliation and embarrassment; and serious impairment of body function. (See **Exhibit B**, Complaint, ¶ 31).

d. Plaintiff seeks to recover damages not only for the alleged pain and suffering that resulted from her alleged injuries, but also for past and

future medical expenses and lost earnings. (See **Exhibit B**, Complaint, ¶¶ 31-38).

e. Plaintiff is seeking an award of both compensatory and punitive damages in her Complaint. (See **Exhibit B**, Complaint, ¶¶ 47-48 & *ad damnum* clauses).

f. The alleged nature of Plaintiff's injuries and claimed damages make it clear that the damages that Plaintiff will seek in the Lawsuit will exceed the jurisdictional requirement of \$75,000. See Russo v. Wal-Mart Stores East, L.P., 2017 U.S. Dist. LEXIS 69633, *4-5 (M.D. Pa. 2017) (holding that allegations of significant injuries and damages in a complaint will trigger notice by the defendant that an amount in excess of the jurisdictional amount is at issue for purposes of the removal period); Sims v. PerkinElmer Instruments, LLC, 2005 U.S. Dist. LEXIS 5300, *10-11 (E.D. Pa. 2005) (same).

g. As such, upon information and belief, Defendants aver that the amount in controversy exceeds \$75,000, exclusive of interests and costs.

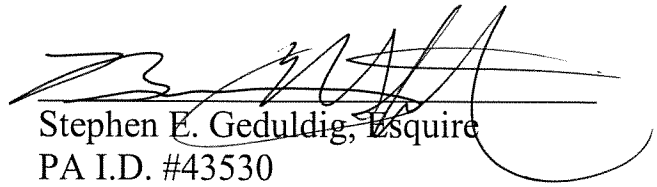
9. For the reasons set forth above, removal of the Lawsuit to this Court is just and proper.

10. Upon confirmation of filing and docketing with this Court, this Notice of Removal shall be provided to all parties, as well as the Court of Common Pleas of Luzerne County, in accordance with 28 U.S.C. § 1446(d).

Respectfully Submitted,

**PION, NERONE, GIRMAN, WINSLOW
& SMITH, P.C.**

By:



Stephen E. Geduldig, Esquire
PA I.D. #43530

Bradley N. Sprout, Esquire
PA I.D. #203182

**Counsel for Defendants:
Julius A. Dzakpasu & Western
Express, Inc., d/b/a Western
Express**

Date: April 12, 2019

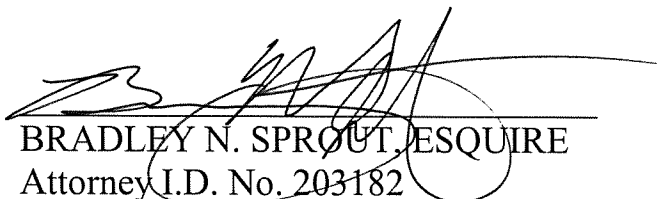
CERTIFICATE OF SERVICE

I, Bradley N. Sprout, Esquire, of the law firm of Pion, Nerone, Girman, Winslow & Smith, P.C., counsel for the Defendants, Julius A. Dzakpasu & Western Express, Inc., d/b/a Western Express, hereby state that a true and correct copy of the foregoing **Notice of Removal** was served upon all counsel of record via U.S. First-Class Mail, postage prepaid, as follows:

Kevin C. Quinn, Esq.
Brian Q. McDonnell, Esq.
Hourigan, Kluger & Quinn
600 Third Avenue
Kingston, PA 18704
Attorneys for Plaintiff

**PION, NERONE, GIRMAN,
WINSLOW & SMITH, P.C.**

Date: April 12, 2019


BRADLEY N. SPROUT, ESQUIRE
Attorney I.D. No. 203182